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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,069	05/04/2004	Michael L. Boucher	30014200-1110	6646
58328 7590 11/14/2008 SUN MICROSYSTEMS C/O SONNENSCHN NATH & ROSENTHAL LLP P.O. BOX 061080 WACKER DRIVE STATION, SEARS TOWER CHICAGO, IL 60606-1080				
EXAMINER				
DENG, ANNA CHEN				
ART UNIT		PAPER NUMBER		
2191				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/840,069

**Applicant(s)**

BOUCHER, MICHAEL L.

**Examiner**

ANNA DENG

**Art Unit**

2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 04 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/2008 has been entered.
2. Claims 1-16 are pending.

### ***Response to Amendment***

3. The rejection under 35 U.S.C. 112, second paragraph to claims 1-16 is withdrawn in view of applicant's amendment.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-16 are rejected under 35 U.S.C. 102 (e) as being anticipated by Arnold et al. USPN 6,971,091 B1 (hereinafter Arnold).

**Per Claim 1 (currently amended):**

Arnold discloses:

**A method in a data processing system for optimizing a program** (Arnold, col. 4, lines 12-17, system and method for adaptively optimizing a computer program executing in an execution environment, the execution environment comprising one or more compiler devices for providing various levels of program optimization), **the method comprising the steps of:**

**automatically analyzing a statistical profile of a program execution** (Arnold, col. 4, lines 20-25, a controller device for receiving the characterized raw profile data from the runtime measurements sub-system and analyzing the data for determining whether a level of program optimization for the executing program is to be performed by a compiler device); and

**automatically optimizing object code of the program based on the analysis, information about at least one prior compilation of the program, and information about at least one prior optimization of the program, wherein the automatic optimizing includes determining that additional information is required to optimize the object code of the program, performing a first compiling of a portion of the program, executing the first compiled portion of the program, gathering the additional information, and performing a second compiling of the portion of the**

**program using the gathered additional information** (Arnold, col. 4, lines 17-31, a runtime measurements sub-system for monitoring execution of the computer program (first compiling executable program) to be optimized, the monitoring including obtaining raw profile data samples and characterizing the raw profile data... the controller generating a compilation plan in accordance with a determined level of optimization, and, a recompilation sub-system (second compiling) for receiving a compilation plan from the controller and invoking a compiler device for performing the level of program optimization of the executing program in accordance with the compilation plan; also, see FIG. 2, col. 6, lines 43-51, each organizer 215 analyzes raw data and package the data into a suitable format 221 for input to the controller. Additionally, an organizer 215 may add information to an organizer event queue 220 for the controller to process...).

**Per Claim 2:**

Arnold discloses:

**wherein the program is automatically optimized during a compilation** (Arnold, col. 5, lines 11-15, an optimizing compiler for translating bytecodes into an intermediate representation, upon which it performs a variety of optimizations).

**Per Claim 3:**

Arnold discloses:

**wherein the program is automatically optimized during a run-time compilation** (Arnold, col. 2, lines 23-33, runtime environments and tools can benefit

from runtime feedback from a program....Java virtual machines may use runtime feedback to guide optimization of the running program...Identify sections of the program where significant runtime is spent and recompiles those sections with an optimizing compiler; also, col. 5, lines 3-7, the principles of adaptive optimization as described herein may be applicable for any run-time environment, e.g., JVM, interpreters, Just-in-Time compilers, etc).

**Per Claim 4:**

Arnold discloses:

**the steps of interrupting the program** (Arnold, col. 9, lines 28-40, interrupt handler is coded to catch the timer interrupt. When interrupt handler is code to catches the interrupt...a sample is collected...);

**recording an execution state of the program** (Arnold, col. 7, lines 57-64, uses the AOS database to record compilation plans and to track the status and history of methods selected for recompilation. The compilation threads also record the time taken to execute each compilation plan ... data on previous compilation plans executed ...); and

**storing the recorded execution state to create the statistical profile** (Arnold, col. 7, lines 53-56, The AOS database 260 provides a repository where the adaptive optimization system records decisions, events, and static analysis results (statistical profile)).

**Per Claim 5:**

Arnold discloses:

**wherein the information about at least one prior compilation of the program includes a profile of the program implemented during the at least one prior compilation** (Arnold, col. 6, lines 34-37, the runtime measurement subsystem gathers information about executing Java methods (including those of the JVM itself— compilation (prior compilation) see, col. 5, lines 9-15)).

**Per Claim 6:**

Arnold discloses:

**wherein the information about at least one prior optimization of the program includes a profile of at least one change made to the program during the at least one prior compilation** (Arnold, col. 11, lines 62-65, It may also be desirable to decrease sampleSize (profile information) when the application's working set is rapidly changing to enable the controller to quickly identify the new set of important methods to optimize).

**Claims 7-12:**

These are computer-readable storage medium versions of the claimed method above (claims 1-6, respectively), wherein all claim limitations also have addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Arnold).

**Claims 13-15:**

These are data processing system versions of the claimed method above (claims 1-3, respectively), wherein all claim limitations also have addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Arnold).

**Claim 16:**

This is another data processing system version of the claimed method above (claim 1), wherein all claim limitations also have addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also anticipated by Arnold).

***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 7, 13, and 16 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anna Deng whose telephone number is 571-272-5989. The examiner can normally be reached on Monday to Friday 9:30 AM - 6:00 PM.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached at 571 –272-3708. The fax phone number for the organization where this application or proceeding is assigned is 703-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Anna Deng/

Examiner, Art Unit 2191

11/07/2008